IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11507 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL JASHUBHAI BHAICHANDBHAI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 11507 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR PATEL A.G.P.for Respondents No. 1-3

SERVED BY RPAD - (N) for Respondent No. 4

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/01/2002

ORAL JUDGEMENT

1. By virtue of order passed by District Magistrate, Sabarkantha at Himatnagar on 1.11.2001 in exercise of

powers under Section 3 of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 ('P.B.M. Act' for short). the petitioner came to be detained on 19.11.2001. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the said order of detention on various grounds stated in the petition.

2. The grounds of detention dated 4.11.2001, indicate that the petitioner was serving as a godown clerk in a fair price shop run by the Hathipura Sewa Sahkari Mandali Limited in Hathipura, Taluka Bayad, District Sabarkantha. It was found that he had committed illegality and irregularity in respect of fair price wheat and rice. The activities were found to be detrimental to smooth supply of essential commodities. It was also found that the petitioner had illegally disposed of quantity of wheat and rice for his personal gain. The detaining authority observed in the ground of detention that since he is required to be immediately prevented from pursuing the activities the detenu is required to be detained under P.B.M. Act as other less drastic remedies may not prove to be adequate.

3. Learned advocate for the petitioner Mr.Prajapati, has relied on the only contention that the grounds of detention were nonexistent when the order of detention was passed and, therefore, the order would stand vitiated. It is clear from the date of order and the date of the ground of detention that grounds of detention were formulated subsequent to the order i.e. on 4.11.2001. It is also clear from the language employed in the ground of detention that the ground were formulated on that day only. It was therefore urged that the petition may be allowed.

4. The petition is opposed by the learned A.G.P. Mr.Patel on behalf of the respondents Nos.1, 2, and 3 whereas Ms.Davawala for respondent No.4. Affidavit-in-reply is filed on behalf of the State Government by Deputy Secretary, Food, Civil Supplies and Consumer Affairs Department, Gandhinagar whereas affidavit-in-reply on behalf of respondent No.4 - Central Government Union of India is filed by Under Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food, Public Distribution, New Delhi.

5. Considering the rival side contention, it is clear from a plain reading of the order as well as the grounds of detention that the grounds of detention are dated four days after the order of detention. The

language also indicates that they were formulated after the order was passed. The contention regarding nonexistence of the ground of detention has been taken by the petitioner in ground 'G' of the petition. The affidavit-in-reply by the State Government does not deny that fact. Under the circumstances, it has to be accepted that the grounds of detention were not formulated and were not in existence when the order of detention was passed. In this regard the decision in case of Parshottam Dahyabhai Chunara v. State of Gujarat and Ors. 29 (1) G.L.R. 342 may be referred. The Division Bench of this Court has taken a view that the grounds of detention must be in existence on the day of order of detention and if the grounds are recorded subsequently the order of detention would be bad. The said decision would squarely be applicable to the facts of the present case and the order of detention therefore deserves to be quashed.

For the foregoing reasons, the petition is allowed. The order passed by the District Magistrate, Sabarkantha at Himatnagar dated 1.11.2001 is hereby quashed and set aside. Petitioner detenu Patel Jashubhai Bhaichandbhai be released from detention forthwith if not required in any other case. Rule is made absolute accordingly. No costs. Direct Service is permitted.

(A.L. Dave, J.)

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